

# EXHIBIT A

***In The Matter Of:***

**Desheila Howlett v. City of Warren**

**Mayor James Fouts**

**August 23, 2018**



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August 23, 2018

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT IN THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION</p> <p>DESHEILA C. HOWLETT,</p> <p style="text-align: center;">Plaintiff,</p> <p>-vs- Case No. 17-11260 Hon. Terrance G. Berg</p> <p>CITY OF WARREN, COMMISSIONER JERE GREEN, acting in his individual capacity, LT. LAWRENCE GARDNER, SHAWN JOHNSON, DAWN McLANE, ANWAR KHAN, DARRIN LABIN, WILLIAM ROSS, KEVIN BARNHILL, PAUL HOUTOS, SCOTT TAYLOR,</p> <p style="text-align: center;">Defendants</p> <hr style="width: 20%; margin-left: 0;"/> <p>The Deposition of MAYOR JAMES R. FOUTS, taken at Warren City Hall, 1 City Square, Warren, Michigan, commencing at 11:35 a.m., on Thursday, August 23, 2018. Reporter: Pamela Mocer, CSR-2285</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES CONTINUED:</p> <p>2</p> <p>3 RAECHEL M. BADALAMENTI, ESQ. (P64361)</p> <p>4 Kirk, Huth, Lange &amp; Badalamenti, PLC</p> <p>5 19500 Hall Road, Suite 100</p> <p>6 Clinton Township, Michigan 48038</p> <p>7 email: Rbadalamenti@khlblaw.com</p> <p>8 (586) 412-4900</p> <p>9 Appearing on behalf of Non-Party City of Warren</p> <p>10 Mayor Jim Fouts Only.</p> <p>11</p> <p>12 ALSO PRESENT: Amanda Mika</p> <p>13 Richard Sabaugh</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 LEONARD MUNGO, ESQ. (P43562)</p> <p>4 The Mungo Law Firm, PLC</p> <p>5 333 W. Fort Street, Suite 1500</p> <p>6 Detroit, Michigan 48226</p> <p>7 email: Mungol16@msn.com</p> <p>8 (313) 963-0407</p> <p>9 Appearing on behalf of Plaintiff.</p> <p>10</p> <p>11 RONALD G. ACHO, ESQ. (P23913)</p> <p>12 Cummings, McClorey, Davis &amp; Acho, PLC</p> <p>13 17436 College Parkway</p> <p>14 Livonia, Michigan 48152</p> <p>15 email: Racho@emda-law.com</p> <p>16 (734) 261-2400</p> <p>17 -and-</p> <p>18 ETHAN VINSON, ESQ. (P26608)</p> <p>19 City of Warren</p> <p>20 1 City Square, Suite 400</p> <p>21 Warren, Michigan 48093</p> <p>22 email: Evinson@cityofwarren.org</p> <p>23 (586) 574-4671</p> <p>24 Appearing on behalf of Defendants.</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 TABLE OF CONTENTS</p> <p>2 WITNESS: MAYOR JAMES R. FOUTS</p> <p>3 PAGE</p> <p>4 Cross-Examination by Mr. Mungo 7</p> <p>5</p> <p>6</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 EXHIBIT IDENTIFICATION PAGE</p> <p>10 (Exhibits attached to transcript.)</p> <p>11 Exhibit 1 Municode 20</p> <p>12 Exhibit 2 Antidiscrimination, Sexual and 94</p> <p>13 Racial Harassment Policy</p> <p>14 Exhibit 3 Diversity Commissioner 94</p> <p>15 Exhibit 4 USCIS Form 1-9 94</p> <p>16 Exhibit 5 Antidiscrimination, Sexual and 95</p> <p>17 Racial Harassment Policy</p> <p>18 Exhibit 6 General Order 17-09 95</p> <p>19 Exhibit 7 Diversity and Inclusion 95</p> <p>20 Coordinator</p> <p>21 Exhibit 8 Affidavit of Gregory A. Murray 95</p> <p>22 Exhibit 9 10/24/17 Murray email to Fouts 95</p> <p>23 re Resignation Consideration</p> <p>24 Exhibit 10 First Amended Complaint 107</p> <p>25 Exhibit 11 Opinion 107</p>

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<p style="text-align: right;">Page 53</p> <p>1 MS. BADALAMENTI: And that was paragraph 4</p> <p>2 just for the record.</p> <p>3 MR. MUNGO: I'm sorry, ma'am?</p> <p>4 MS. BADALAMENTI: That was paragraph 4</p> <p>5 just for the record.</p> <p>6 MR. MUNGO: No, no, no, no.</p> <p>7 MS. BADALAMENTI: What he just read was 4.</p> <p>8 MR. ACHO: You misstated it, Mr. Mungo.</p> <p>9 MS. BADALAMENTI: I just want to clarify</p> <p>10 for the record.</p> <p>11 MR. ACHO: You misstated it was 5 when it</p> <p>12 was actually number 4.</p> <p>13 MR. MUNGO: You may be right, Counsel,</p> <p>14 excuse me.</p> <p>15 MS. BADALAMENTI: I know that I am because</p> <p>16 I know what he just read, but now we're on 5.</p> <p>17 MR. MUNGO: Ms. Badalamenti, I'm not</p> <p>18 trying to argue with you, ma'am. I'm just trying</p> <p>19 to --</p> <p>20 MS. BADALAMENTI: Let's just keep going.</p> <p>21 Do you want him to read number 5?</p> <p>22 THE WITNESS: Number 5 --</p> <p>23 BY MR. MUNGO:</p> <p>24 Q. Excuse me, sir, there's no question pending.</p> <p>25 MR. MUNGO: Counsel, I'm just trying to</p>	<p style="text-align: right;">Page 55</p> <p>1 A. Mr. Mungo --</p> <p>2 Q. -- I want to ask you about specific ones first, and</p> <p>3 then you can go back and get any ones that you feel</p> <p>4 you want to add, you want to address, okay.</p> <p>5 MS. BADALAMENTI: Hold on a second.</p> <p>6 Here's what we'll do.</p> <p>7 Go with his question, try and answer them.</p> <p>8 If you can't, Mr. Mayor, then you can't, but try to</p> <p>9 answer his questions because he directs the</p> <p>10 deposition.</p> <p>11 So he wants to take you to 10. You've</p> <p>12 told him that you can't do that, but let's just try.</p> <p>13 THE WITNESS: Okay.</p> <p>14 BY MR. MUNGO:</p> <p>15 Q. And then, Mr. Mayor, if you want to go back and hit</p> <p>16 others that you want to talk about, you can feel free</p> <p>17 to do that, okay, if you think they're relevant.</p> <p>18 Number 10, does that particular</p> <p>19 responsibility apply to you, sir?</p> <p>20 A. In a general sense, but the definition of efficient</p> <p>21 administration I'm not sure how that would be defined.</p> <p>22 I appoint the --</p> <p>23 Q. So I'll accept the answer in a general sense; that's</p> <p>24 good enough for me, okay.</p> <p>25 A. All right.</p>
<p style="text-align: right;">Page 54</p> <p>1 make sure we stay on track and that we keep this as</p> <p>2 smooth as possible, okay. That's all, ma'am.</p> <p>3 MS. BADALAMENTI: Let's keep going.</p> <p>4 THE WITNESS: All right.</p> <p>5 BY MR. MUNGO:</p> <p>6 Q. Sir, hold on to my question. So, Mr. Mayor, which</p> <p>7 item did you just answer to --</p> <p>8 A. 4.</p> <p>9 Q. -- number 4 or number 5?</p> <p>10 A. 4.</p> <p>11 Q. Okay, very good.</p> <p>12 A. I'm reading 5 now.</p> <p>13 "Authenticate by his signature such</p> <p>14 instruments and proceedings as are required to be</p> <p>15 authenticated by him by law or the council."</p> <p>16 I would agree with that.</p> <p>17 Q. Okay, very good.</p> <p>18 Now, Mr. Mayor, I want to ask you</p> <p>19 specifically about item number 10.</p> <p>20 A. Well, wait a minute, I want to go through all of</p> <p>21 these. You jumped.</p> <p>22 Q. Well, you can go back and go through them, sir.</p> <p>23 A. No, no.</p> <p>24 Q. You can go back and go through them, sir. I want to</p> <p>25 ask --</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Well, what about number 11?</p> <p>2 MR. ACHO: Well, hold on, he wasn't</p> <p>3 finished.</p> <p>4 MS. BADALAMENTI: That's fine. In a</p> <p>5 general sense is fine.</p> <p>6 THE WITNESS: In a general sense is fine.</p> <p>7 MR. ACHO: He wasn't finished.</p> <p>8 MR. MUNGO: Mr. Acho, I'm fine, sir, with</p> <p>9 however you want to do this, you and Ms. Badalamenti,</p> <p>10 but, you know, I'm getting conflicting signals and</p> <p>11 directions from you guys, and then you're over talking</p> <p>12 each other with your objections.</p> <p>13 So I'm just saying, sir, I'm willing to do</p> <p>14 it however you guys want to do it, but let's just do</p> <p>15 it orderly, please.</p> <p>16 MR. ACHO: I'm just following the Federal</p> <p>17 Rules of Civil Procedure.</p> <p>18 MR. MUNGO: I know you are, sir, but</p> <p>19 you've got to do it orderly, right?</p> <p>20 MR. ACHO: You see you're talking over me.</p> <p>21 MR. MUNGO: I apologize.</p> <p>22 MR. ACHO: The Federal Rules of --</p> <p>23 MR. MUNGO: Let me know when you're done.</p> <p>24 MR. ACHO: You're talking over me again.</p> <p>25 The Federal Rules of Civil Procedure require attorneys</p>

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<p style="text-align: right;">Page 57</p> <p>1 inquiring of witnesses to allow the witnesses to fully 2 and completely answer all the questions. 3 On item 10, the mayor was not finished. 4 He only covered the first part of that. He didn't go 5 over the rest of number 10. 6 MR. MUNGO: Okay. You can ask him about 7 that when you ask questions. 8 MR. ACHO: Okay, so you won't let him 9 finish; is that correct? Is that correct? 10 MR. MUNGO: Let me know when you're done. 11 MR. ACHO: I'm asking you a question. 12 MR. MUNGO: I'm not going to answer that 13 question. 14 MR. ACHO: All right, okay, all right. 15 BY MR. MUNGO: 16 Q. Sir, item number 11. 17 MS. BADALAMENTI: The reality is that 18 Mr. Mungo controls the deposition, and if he cuts you 19 off and stops you, we're just going to keep going. 20 BY MR. MUNGO: 21 Q. Item number 11, Mr. Mayor, does that apply to you 22 either specifically or generally? 23 A. Well, let me read it, first of all. 24 Q. Yes, sir. 25 A. And I'll read it out loud just so you can hear it,</p>	<p style="text-align: right;">Page 59</p> <p>1 objection. Would you like the witness to answer the 2 question? 3 MR. MUNGO: Let me know when you're done 4 then, okay? 5 MS. BADALAMENTI: That is so obnoxious. I 6 feel like I'm talking to my five year old when you say 7 that. "Let me know when you're done." Really? 8 MR. MUNGO: I'm not going to insult you. 9 MS. BADALAMENTI: "So let me know when 10 you're done." 11 MR. MUNGO: But I am not going to insult 12 you, ma'am. 13 MS. BADALAMENTI: You've said that about 14 20 times. Stop saying that. 15 MR. MUNGO: I'm not going to insult you, 16 ma'am, okay. 17 MS. BADALAMENTI: You asked him a 18 question. Do you want him to answer? 19 MR. MUNGO: You and Mr. Acho have insulted 20 me several times already – 21 MS. BADALAMENTI: Do you want him to 22 answer? 23 MR. MUNGO: – but I am not going to 24 return in like kind. I am not going to do that 25 because that's not me. Do you understand that?</p>
<p style="text-align: right;">Page 58</p> <p>1 too. 2 MS. BADALAMENTI: Just go nice and slow 3 for the court reporter now. 4 THE WITNESS: Okay. "Approve the 5 administrative rules and regulations of the several 6 directors, commissions or boards in charge of the 7 departments of the city government before such rules 8 and regulations shall be filed with the city clerk." 9 MS. BADALAMENTI: Wait for a question. 10 THE WITNESS: Okay. 11 BY MR. MUNGO: 12 Q. Excuse me, Mr. Mayor, one second. 13 So, sir, does that provision apply to you 14 generally or specifically? 15 A. This would again be subject to interpretation. I 16 think – 17 Q. So it sounds to me you're saying generally it applies 18 to you? 19 MS. BADALAMENTI: I don't think you should 20 put words in his mouth. Do you want him to answer the 21 question or not? 22 MR. MUNGO: I really, Counsel, would beg 23 you please to make proper objections. That is not 24 proper. 25 MS. BADALAMENTI: It is a proper</p>	<p style="text-align: right;">Page 60</p> <p>1 So let me know when you're done, ma'am. 2 MS. BADALAMENTI: Again. 3 MR. MUNGO: I hope you're deducting all 4 this from my time. 5 MS. BADALAMENTI: No, that's all part of 6 your time. I was asking you to allow the witness to 7 answer the question. You have indicated that you will 8 not allow him to do so. 9 The record should just reflect that the 10 witness has been unable to answer the question 11 regarding paragraph 11. 12 BY MR. MUNGO: 13 Q. Okay. Sir, does paragraph 11 apply to you generally 14 or specifically? And if yes or no, explain why. 15 A. Number one, I can't answer yes or no because this is 16 subject to interpretation. 17 My interpretation, Mr. Mungo, here is that 18 at the time of the adoption of the city charter this 19 was a literal responsibility. Today each department 20 adopts their own rules and regulations and it's not 21 subject to my approval. 22 Q. So you're saying that you don't know whether or not 23 item 11 applies to you as your duties, current duties 24 as mayor – 25 MS. BADALAMENTI: That's a</p>

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<p style="text-align: right;">Page 93</p> <p>1 Q. So you did testify earlier that you never approved any</p> <p>2 of the policies and rules, administrative rules and</p> <p>3 regulations?</p> <p>4 A. Well --</p> <p>5 Q. That you indicated earlier that you don't</p> <p>6 micromanage --</p> <p>7 A. Right.</p> <p>8 Q. -- if there's a problem come up? So you don't approve</p> <p>9 them, they enact whatever they want to do, and if a</p> <p>10 problem comes up, then you address it, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Okay, thank you.</p> <p>13 Are the department heads that you appoint,</p> <p>14 specifically the police commissioner since you've been</p> <p>15 mayor, sir, has he been under your control and</p> <p>16 supervision in all respects?</p> <p>17 A. Not under my control. I don't control anybody,</p> <p>18 Mr. Mungo.</p> <p>19 Q. Or supervision in all respects?</p> <p>20 A. I don't supervise the police commissioner. He runs</p> <p>21 his department on a day-to-day basis, not I. I don't</p> <p>22 control any department heads.</p> <p>23 Q. Yes, sir, and that's always been the case since you've</p> <p>24 been mayor, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 95</p> <p>1 going to take a short break then.</p> <p>2 (Pause in proceedings at 1:14 p.m.)</p> <p>3 (Exhibit Numbers 5-9 marked at 1:14 p.m.)</p> <p>4 (Back on the record at 1:22 p.m.)</p> <p>5 BY MR. MUNGO:</p> <p>6 Q. Mr. Mayor, I'm going to show you Deposition Exhibit</p> <p>7 Number 2 -- Number 3, Number 2 and Number 5 and Number</p> <p>8 6, Mr. Mayor. Just take a look at those documents,</p> <p>9 sir, and let me know whether or not you have ever seen</p> <p>10 those before, either one of them.</p> <p>11 A. I did sign this. It was some time ago. It's part of</p> <p>12 the city policy.</p> <p>13 Q. Mr. Mayor, could you state the number of that exhibit,</p> <p>14 please?</p> <p>15 A. 2.</p> <p>16 Q. Okay. And what is the title of that?</p> <p>17 A. It's entitled antidiscrimination, sexual and racial</p> <p>18 harassment policy.</p> <p>19 Q. When did you sign that, sir? There's no date on that.</p> <p>20 A. Yeah, I don't remember when I signed it. It's been</p> <p>21 some time.</p> <p>22 Q. It's been some time?</p> <p>23 A. Yes. I think when I started we probably -- I signed</p> <p>24 it then. It's a policy that's been --</p> <p>25 Q. In 2007 you think?</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. Okay, thank you.</p> <p>2 Sir, you brought with you -- and I want to</p> <p>3 mark this as Deposition Exhibit Number 2.</p> <p>4 MS. BADALAMENTI: I have an extra copy.</p> <p>5 You can mark those and then you can have this copy.</p> <p>6 Does that work for you?</p> <p>7 MR. MUNGO: What difference does it make?</p> <p>8 MS. BADALAMENTI: I don't know. I just</p> <p>9 want to give you an extra copy so you can mark those</p> <p>10 ones and put them in front of him.</p> <p>11 (Exhibit Numbers 2-4 marked at 1:10 p.m.)</p> <p>12 MR. MUNGO: So Deposition Exhibit 2 would</p> <p>13 be the City of Warren antidiscrimination, sexual and</p> <p>14 racial harassment policy.</p> <p>15 MS. BADALAMENTI: And 3?</p> <p>16 MR. MUNGO: And 3 would be the diversity</p> <p>17 commissioner.</p> <p>18 MS. BADALAMENTI: Okay.</p> <p>19 MR. MUNGO: And 4 would be the employment</p> <p>20 eligibility verification form.</p> <p>21 MS. BADALAMENTI: Thank you. Are we on or</p> <p>22 off?</p> <p>23 MR. MUNGO: We're off. She's marking</p> <p>24 exhibits.</p> <p>25 MS. BADALAMENTI: If we're off, we're</p>	<p style="text-align: right;">Page 96</p> <p>1 A. You know what? I can't speculate. With all due</p> <p>2 respect, I can't remember when I signed it.</p> <p>3 Q. Was the clerk provided with a copy of that document?</p> <p>4 A. I'm not sure. I don't know.</p> <p>5 Q. Well, you didn't know -- you would normally have not</p> <p>6 given him that document anyway, would you?</p> <p>7 A. I don't know. It would be subject to my office. I</p> <p>8 would sign it, and then whoever would have been in</p> <p>9 charge -- so this would have been through -- this</p> <p>10 would be through --</p> <p>11 Q. So the answer to my question --</p> <p>12 A. -- human resources.</p> <p>13 Q. So the answer to my question is you wouldn't know</p> <p>14 that?</p> <p>15 A. Correct, I wouldn't know if it had been given to the</p> <p>16 clerk. This would be through the human resource</p> <p>17 department. They give a number of things when they</p> <p>18 hire someone, and anybody who is hired by the city</p> <p>19 would get a copy of this.</p> <p>20 Q. But you wouldn't know whether or not it was ever given</p> <p>21 to the clerk of the city?</p> <p>22 A. Not offhand, no.</p> <p>23 Q. Look at the next exhibit, sir. What is that one?</p> <p>24 MS. BADALAMENTI: 5.</p> <p>25 THE WITNESS: 5, City of Warren</p>

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<p style="text-align: right;">Page 97</p> <p>1       antidiscrimination, sexual and racial harassment 2       policy. 3       BY MR. MUNGO: 4       Q.   Yes, sir, and I think Number 5 is a one-pager; is that 5       correct? 6       A.   Yes. 7       Q.   That's a one-pager. And have you ever seen that 8       document before? 9       A.   I may have. I see it's signed by Mark Steenburgh down 10       here. 11       Q.   So you don't — so your testimony is that you don't 12       really recollect seeing that document before, correct? 13       A.   I may have. I probably did. I — 14       Q.   Yes, sir. And you don't know whether or not that 15       document was given to the clerk of the city, correct? 16       A.   Well, it's signed by Mark Steenburgh, so — 17       Q.   No, my question is you don't know whether or not that 18       document was even given to the clerk for processing, 19       correct? 20       A.   You would have to check with the clerk on that. 21               MS. BADALAMENTI: Do you know. 22       BY MR. MUNGO: 23       Q.   No, I'm asking do you know. 24       A.   Oh, no. 25       Q.   And then the next exhibit, sir, what is that?</p>	<p style="text-align: right;">Page 99</p> <p>1       on me, Ms. Badalamenti, that's what you shouldn't do. 2       What you just did there was helpful. 3       MS. BADALAMENTI: That's very obnoxious, 4       Mr. Mungo. Let's continue, okay. 5       MR. MUNGO: Mr. Barnwell said I didn't 6       give him one deposition transcript and you lied to the 7       court. 8       MS. BADALAMENTI: I don't even know what 9       it means to lie on someone. I don't even know what 10       that means. 11       MR. MUNGO: I'm just letting you know that 12       it's okay to do things that's appropriate. 13       MS. BADALAMENTI: I don't know what it 14       means to lie on you. I don't know what that means. 15       MR. MUNGO: It's things that's 16       inappropriate that you shouldn't do. 17       BY MR. MUNGO: 18       Q.   So, Mr. Mayor, did you approve this document that was 19       drafted by the police commissioner Jere Green? 20       A.   No. 21       Q.   You didn't approve it? 22       A.   No. 23       Q.   Was it — do you know whether or not it was filed with 24       the clerk of the city? 25       A.   I'm not aware. I don't know whether it was or wasn't.</p>
<p style="text-align: right;">Page 98</p> <p>1       Diversity — 2       MS. BADALAMENTI: 6. 3       BY MR. MUNGO: 4       Q.   Yes, Number 6, is — what is that document, sir? 5       A.   This general order is what I have next. 6       Q.   It's a general order. And what does that general 7       order address, sir? 8       A.   Discrimination and sexual harassment. 9       Q.   In which department, sir? 10       A.   I'm looking to see which department it is. It's got 11       subject, reference. Let's see, does it have it at the 12       end? Oh, it's labeled here police department. 13       MS. BADALAMENTI: I did point out for him 14       the symbol, sorry. 15       THE WITNESS: I was looking for police and 16       the symbol. 17       MS. BADALAMENTI: I was trying to help. I 18       probably shouldn't have done that. 19       MR. MUNGO: Who's talking now? 20       MS. BADALAMENTI: Sorry, I probably 21       shouldn't have done that, Mr. Mungo. I just pointed 22       to the symbol. 23       THE WITNESS: No, I was looking for what 24       department it was. 25       MR. MUNGO: What you shouldn't do is lie</p>	<p style="text-align: right;">Page 100</p> <p>1       Q.   Okay, very good, very good, all right. 2       And this Deposition Exhibit Number 3, what 3       is this diversity commissioner? 4       MS. BADALAMENTI: Do you have that? He 5       doesn't have that. 6       BY MR. MUNGO: 7       Q.   Oh, Number 3, I'm sorry. 8       A.   All right. That is the description that we put 9       forward when I decided I was looking for a diversity 10       commissioner in the spring of 2016, and I worked with 11       Phil Easter, the human resource director at the time, 12       and this is what we came up with with what we were 13       looking for when we advertised for this back in the 14       spring and summer of 2016. 15       MR. MUNGO: Let the record reflect that 16       I'm about to show the deponent Deposition Exhibit 17       Number 7. There you go. 18       MS. BADALAMENTI: Thank you. 19       MR. MUNGO: There you go. And do you want 20       one, Mr. Vinson? 21       MR. VINSON: Yes, please, thank you. 22       BY MR. MUNGO: 23       Q.   Sir, have you ever seen that document before? 24       A.   I may have. 25       Q.   So you don't know?</p>

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